

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Adjustment of Rates of Kentucky-
American Water Company

)
)

Case No. 2004-00103

ATTORNEY GENERAL'S RESPONSE TO
APPLICATION FOR REHEARING BY COMMUNITY
ACTION COUNCIL FOR LEXINGTON-FAYETTE,
BOURBON, HARRISON AND NICHOLAS COUNTIES, INC.

The Attorney General tenders his response to the Application for Rehearing by the Community Action Council ("CAC"). The Commission should deny the Application. The Attorney General states the following.

The CAC application for rehearing continues to mix apples and oranges, namely, KRS 278.170 Subsections 1 and 2. This fact is readily apparent in the CAC's summary which states, in pertinent part, "the proposed low-income water discount is a reasonable preference under KRS 278.170."¹ This is a statement without any meaning under Kentucky law.

The unreasonable preference analysis is a Subsection 1 test. The analysis has no application to Subsection 2 which sets forth the scope of Commission authority for authorizing reduced rate service such as the Kentucky-American Water Company discount proposal. Under Subsection 2, the applicable test for

¹ Application for Rehearing by CAC, page 5.

reduced rate service is whether such a discount is expressly authorized by Subsection 2. Kentucky-American's proposal is not.

Kentucky-American's low income discount proposal is, in both form and substance, a request for the provision of reduced rate service for a reason not within the scope of KRS 278.170(2). In reaching the correct result, the Order notes "the Commission further finds no merit to the contention that KRS 278.170(2) authorizes the Low Income Water Discount."² Consequently, this determination, which contains no error of fact or law, constitutes adequate and independent grounds for the denial. There are no grounds for rehearing.

With regard to the remainder of the CAC application for rehearing, the Attorney General notes that KRS 278.170(1) has no application to the KAWC low income discount proposal due to the fact that reduced rate service is a matter falling solely within the scope of KRS 278.170(2). Because the Order reaches the correct result on other adequate and independent grounds, the Attorney General will simply reference his discussion in his Brief and Reply Brief and note that KRS 278.170(1) offers no grounds for authorization and is otherwise irrelevant to this set of facts.

² Order, 28 February 2005, page 83.

WHEREFORE, the Attorney General respectfully requests this Commission to deny the Application for Rehearing by CAC.

Respectfully submitted,

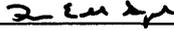
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Submission of Filing in Paper Medium

Per Instructions 3 and 13 of the Commission's 27 May 2004 Order, Counsel submits for filing, by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, the original and one copy in paper medium of the document. 29 March 2005 is the date for the filing in paper medium.


Assistant Attorney General

Certificate of Service

Per Instructions 4, 8 (d), and 12 of the May 27th Order, Counsel certifies service of a true and correct photocopy of the document by mailing the photocopies, first class postage prepaid, to the other parties of record on 28 March 2005.

The following are the other parties of record: David Jeffrey Barberie, Leslye M. Bowman, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; Coleman D. Bush, Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502; Joe F. Childers, 201 West Short Street, Suite 310, Lexington, Kentucky 40507; Roy L. Ferrell, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia 25302; Lindsey W. Ingram III, Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Lindsey W. Ingram, Jr., Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Michael A. Miller, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia, 25302; Jon Parker, 201 W. Short Street, Suite 310, Lexington, Kentucky 40507; Bluegrass FLOW, Inc., c/o Foster Ockerman, Jr., 200 N. Upper Street, Lexington, Kentucky 40507; and Roy W. Mundy II, Kentucky-American Water Company 2300 Richmond Road, Lexington, Kentucky 40502.


Assistant Attorney General

Certification Regarding Electronic Filing

Counsel certifies that he has (per Instructions 3 and 8 (b) of the May 27th Order) submitted one copy of the document in electronic medium. Pursuant to Instructions 8 (a) and 8 (c) of the May 27th Order, he certifies that the electronic version of the filing is a true and accurate copy of the document filed in paper medium and that he has, by electronic mail, notified the Commission and the other parties that the electronic version of the filing has been transmitted to the Commission. 28 March 2005 is the date of filing in electronic medium.



Assistant Attorney General